SINGAPORE REPORTS

TAY YONG KWANG v. ATTORNEY-GENERAL & ORS.

[O.C.J. (Wee Chong Jin C.J.) November 17, 1983]

[Singapore – Originating Summons No. 290 of 1983]

Legal profession – Pupillage – Computation of period of – Scope of r.11(5) of Legal Profession Rules 1967 – Legal Profession Act (Cap. 217), ss. 2 & 9 to 12 – Legal Profession Rules 1967, r. 11(1), (3) & (5).

The applicant in this case was a qualified person within the meaning of the Legal Profession Act (Cap. 217) (the Act). He had served three months and two days' pupillage with a practising advocate and solicitor. He had also served 18 months' pupillage with a legal officer which by section 12(2) counts as three months' pupillage with an advocate and solicitor. He had attended and satisfactorily completed a course of instruction conducted by the Board. This Post-graduate Practical Course in Law was conducted outside normal office hours from April 13, 1981 to June 30, 1981 during the late afternoon and evening from Monday to Friday each week except on two occasions from 9 a.m. to 10 a.m.

In his petition for admission as an advocate and solicitor of the Supreme Court, the following prayers were posed before the court: (1) on the true construction of section 11(5) of the Act whether section 11(5) of the said Act

(a) means that where a pupil reads in the chambers of his Master during the normal office hours of 9 a.m. to 5 p.m. on a weekday, and time is spent in attendance at such course of instruction outside the said normal office hours, that day shall not be counted for the purpose of section 11(2) of the Act;

(b) means that where a pupil reads in the chambers of his Master during the normal office hours of 9 a.m. to 1 p.m. on a Saturday, and the course of instruction is not conducted on a Saturday or is not conducted during the said normal office hours on a Saturday, that day shall not be counted for the purpose of section 11(2) of the Act.

Held, allowing the application for admission: (1) prayers 1(a) & (b) should be answered in the negative;

(2) the legislature by the use of the words "spent in attendance" in section 11(5) read with the earlier part of the sub-section must be taken to have intended that it is only when a pupil attends i.e. is physically present at, the course of instruction that the period of time which he *spends in attendance* at the course shall not be counted in determining his period of pupillage. The Legislature could not have intended that where all the requirements have been met by a person that he cannot be admitted to practice merely because the period covered by the Board's prescribed course of instruction falls within or overlaps the period of that person's pupillage.

[*Editorial Note:* The respondents' appeal against the above Judgment (C.A. No. 27/1983) was heard on February 23, 1984 by Kulasekaram, Sinnathuray and Thean JJ. The Court of Appeal reserved Judgment.]

Cases referred to:

(1) *Re Syed Hassan Aljeffree* [1967] 1 M.L.J. 203.
(2) *Pinner* v. *Everett* [1969] 3 All E.R. 257.

ORIGINATING SUMMONS.

Tommy Neo for the applicant.
Ms. Soh Siu Thing for the Attorney-General.
C.R. Rajah for the Law Society.
M. Karthigesu for the Board of Legal Education.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The right to practise the profession of law in Singapore is governed by the Legal Profession Act ("the Act") which came into force on January 11, 1967. The Act repealed the Advocates and Solicitors Ordinance ("the Ordinance") and also established the Board of Legal Education ("the Board") and the Law Society of Singapore ("the Law Society").

The Act lays down certain requirements which must be fulfilled before a person can practise the profession of law in Singapore. The first requirement is set out in Section 9(1) which reads:-

"9(1) The court may in its discretion and subject to the provisions of this Act admit as an advocate and solicitor of the Supreme Court –

(a) any qualified person under the provisions of this Part;

(b) any Malayan practitioner under section 13;

(c) any articled clerk who is duly qualified under the provisions of this Part:"

Section 2 defines "qualified person" to mean any person who –

"(a) has passed the final examination for the degree of Bachelor of Laws in the University of Malaya in Singapore, the University of Singapore or the National University of Singapore;

(b) is a barrister-at-law of England or of Northern Ireland or a member of the Faculty of Advocates in Scotland; or

(c) is a solicitor in England or Northern Ireland or a writer to the Signet, law agent or solicitor in Scotland;"

The other requirements are set out in Section 10(1) which reads:-

"10(1) Subject to section 13, no qualified person shall be admitted as an advocate and solicitor unless he –

(a) has attained the age of twenty-one years;

(b) is of good character;

(c) has *satisfactorily* served the prescribed period of pupillage for qualified persons;

(d) has *attended* such courses of instruction as may be prescribed by the Board; and

(e) has passed such examinations as may be prescribed by the Board." (the emphasis is mine).

The Act itself by Section 11(2) prescribes the period of pupillage which a qualified person must serve as required by Section 10(1)(c). The sub-section reads:-

"11(2) Subject to this section and section 12 the prescribed period of pupillage shall be –

(a) six months where the master satisfies the requirements of paragraph (a) of subsection (1) of section 12; and

(b) three years where the master satisfies the requirements of paragraph (b) of subsection (1) of section 12."

Section 12 provides that where a pupil serves under two masters, one of whom is a practising advocate and solicitor and the other a legal officer, "six months pupillage with a legal officer shall count as one month's period of pupillage with an advocate and solicitor."

The Board by the Legal Profession Rules, 1967 prescribed the course of instruction which a qualified person must have attended and the examination he must have passed as required by Section 10(1)(d) and (e). Rule 11(1) when first promulgated in 1967 by the Board reads:-

"For the purposes of paragraphs (d) and (e) of section 10 and of subsection (3) of section 11 of the Act the Board prescribes and recognises the Postgraduate Practical Course in Law conducted by the University of Malaya or the University of Singapore and the Post Final Practical Course of the Council of Legal Education in Malaya."

In 1975 Rule 11(1) was amended to read:-

"For the purposes of paragraphs (d) and (e) of section 10 and of subsection (3) of section 11 of the Act the Board prescribes the *Postgraduate Practical Course in Law conducted by the Board* and recognises the Postgraduate Practical Course in Law conducted by the University of Malaya or the University of Singapore ...".

This amendment came about because the Board from 1975 conducted its own Practical Course in Law.

It will be seen from Section 10 that a qualified person can only be admitted as an advocate and solicitor of the Supreme Court by the court, meaning "the High Court or a judge when sitting in open court" (see Section 2). The Act does not specify the procedure under which a person applies to be admitted although it indicates that such an application is to be by "petition" as can be seen by Section 11(3) which reads:-

"11(3) A pupil shall before his petition is heard attend and satisfactorily complete a course of instruction organised or recognised by the Board for the purposes of this section unless exempted therefrom under subsection (2) of section 10."

The Act, however, gives by Section 5(3)(h) the Board power to make rules "for regulating the procedure whereby qualified persons and articled clerks who have satisfied the provisions of this Act are admitted as advocates and solicitors by the Supreme Court". The Board in exercise of the powers conferred by Section 5(3) made the Legal Profession Rules, 1967 and, under Form B2 of the Schedule to these Rules, the procedure is by way of a Petition to "The Honourable Judges of the High Court in Singapore."

It would seem that Section 11(3) *(supra)* prescribes another requirement which must be fulfilled before a person can practise the profession of law in Singapore because he must not only satisfy the requirements laid down by Section 9(1) and 10(1) but must also *"satisfactorily complete* a course of instruction organised or recognised by the Board" (the emphasis is mine) before his petition for admission can be heard.

I turn now to deal with the present proceedings. The applicant is a qualified person within the meaning of the Act. He has served three months and two days' pupillage with a practising advocate and solicitor. He has also served not less than 18 months' pupillage with a legal officer which by Section 12(2) counts as not less than three months' pupillage with an advocate and solicitor. He has attended and satisfactorily completed a course of instruction prescribed by or organised by or recognised by the Board. He has petitioned the court to be admitted as an advocate and solicitor of the Supreme Court. He desires his petition to be heard. The course of instruction he attended and satisfactorily completed was conducted by the Board. This Postgraduate Practical Course in Law was conducted outside normal office hours from April 13, 1981 to June 30, 1981 during the late afternoon and evening from Monday to Friday each week, except on two occasions from 9 a.m. to 10 a.m.

Accordingly, he commenced these proceedings:-

"(1) That it may be determined upon the true construction of section 11(5) of the Legal Profession Act (Cap. 217,

1970 Ed) and in the events which have occurred, whether the said section 11(5):

(a) means that where a pupil reads in the chambers of his Master during the normal office hours of 9 a.m. to 5 p.m. on a weekday, and time is spent in attendance at such course of instruction outside the said normal office hours, that day shall not be counted for the purpose of section 11(2) of the said Act;

(b) means that where a pupil reads in the chambers of his Master during the normal office hours of 9 a.m. to 1 p.m. on a Saturday, and the course of instruction is not conducted on a Saturday or is not conducted during the said normal office hours on a Saturday, that day shall not be counted for the purpose of section 11(2) of the said Act.

(2) That if the answers to prayers (1)(a) and (b) are in the negative, that it may be declared by the Honourable Court that the plaintiff has, for the period April 13, 1981 to July 15, 1981, completed 3 months of the period of pupillage stipulated in section 11(2)(a) of the said Act."

Section 11(5) of the Act provides as follows:-

(5) Where a pupil attends the course of instruction referred to in subsection (3) concurrently with his period of pupillage, the period spent in attendance at such course of instruction shall not be counted for the purpose of subsection (2)".

After hearing the parties I answered Prayers 1(a) and (b) in the negative and made a declaration in terms of Prayer 2 of the application. The determination sought involves the construction of Section 11(5) which has two limbs; the first a condition precedent, the second a prohibition. The first limb specifies the facts which must exist before the prohibition can operate. One rule of construction is that words used in a statute specifying the facts which must exist before the prohibition imposed by it can apply should be given their natural and ordinary meaning.

The material words in the first limb of Section 11(5) are "*attends* the course of instruction" and "*concurrently* with his period of pupillage" (the emphasis is mine). The natural and ordinary meaning of the word "attend" is "be present at (lecture etc)". (see *Oxford Concise Dictionary*). Plainly, the phrase "attends the course of instruction" means physical presence during the periods of time when the course of instruction is actually being conducted. The natural and ordinary meaning of the word "concurrently" is "at the same time" or "simultaneously".

A person who attends evening classes, lectures or any course of instruction after his working hours is not working at the same time or simultaneously with the classes, lectures or course of instruction which he attends. In the Malayan case of in *Re Syed Hassan Aljeffree*[1], Mr. Menon, Counsel for the Malayan Bar Council, opposed the petitioner's application for leave to shorten the period during which he is required to read in chambers. His submission was that no shortening should be granted as the petitioner attended the Post-Graduate Practical Course while he was reading in chambers or in the Legal Service. The learned judge dealt with this submission at p.203:-

"Mr. Menon's main objection as I understood him was that the period or part of the period that the petitioner was reading in chambers and the period he was attending the university course coincided. On this ground it is not disputed that the petitioner's attendance at the course was outside the usual office hours. On that ground alone I think the objection must fail".

The true construction of Section 11(5) became abundantly clear by a consideration of the phrase "the period *spent in attendance* at such course" in the second limb of the sub-section. The legislature by the use of the words "spent in attendance" in that phrase read with the earlier part of the sub-section must be taken to have intended that it is only when a pupil attends i.e. is physically present at, the course of instruction that the period of time which he *spends in attendance* at the course shall not be counted in determining his period of pupillage. If the legislature had intended that the period covered by the duration of the course of instruction shall not be counted in determining a person's period of pupillage, the second limb of Section 11(5) would have read "the period covered by such course of instruction shall not be counted for the purpose of subsection (2)". To substitute the phrase "covered by" for the phrase "spent in attendance at" would offend another general rule of construction that words should not be added or altered by implication unless it is necessary to do so to give the paragraph sense and meaning in its context.

In *Pinner* v. *Everett*[2] Lord Reid said at p.258:-

"In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase. We have been warned again and again that it is wrong and dangerous to proceed by substituting some other words for the words of the statute."

Moreover, in my opinion the construction that I have given to Section 11(5) is in accord with the intention of the legislature in accordance with the provisions of the Act. A person may be admitted by the court to practise the profession of law in Singapore if (1) he has the academic qualification prescribed by the Act; (2) he has obtained practical training as a pupil under an experienced master of the work of an advocate and solicitor for the period prescribed by the Act; (3) has attended and satisfactorily completed a course of instruction prescribed by the Board and (4) passed an examination which may be prescribed by the Board.

It cannot, in my opinion, be intended by the legislature that where all these requirements have been met by a person that he cannot be admitted to practise merely because the period covered by the Board's prescribed course of instruction falls within or overlaps the period of that person's pupillage.

It is to be observed that the Act does not lay down the duration of the course of instruction which the Board may prescribe. It may well be that the Board may find it necessary to conduct its course of instruction intermittently so that the course may spread over many months. It may well be that the Board may find it necessary to conduct its course of instruction during the evenings after normal office or business hours. In those circumstances to construe Section 11(5) so that the entire period covered by the course of instruction shall not be counted in calculating the period of pupillage would, by depriving a person who has satisfied all the prescribed requirements from being admitted earlier, be manifestly unfair and a result which could not have been intended by the legislature.

For these reasons I answered Prayers 1(a) and (b) in the negative and made a declaration in terms of Prayer 2 of the originating summons.

Order accordingly.

Solicitors: *Tan, Rajah & Cheah; M. Karthigesu.*

YING TAI PLASTIC & METAL MANUFACTURING (S) PTE. LTD. v. ZAHRIN BIN RABU

[C.A. (Wee Chong Jin. C.J., Sinnathuray & Chua JJ.) November 18, 1983]
[Singapore – Civil Appeal No. 37 of 1982]

Workmen's Compensation – Injury in the course of employment – Scope of section 33 of Workmen's Compensation Act 1975 – Application for compensation under Workmen's Compensation Act can be withdrawn – Workmen's Compensation Act, 1975, ss. 18, 33(1)(a) & 33(2)

The plaintiff/respondent lost four fingers of his right hand as a result of an accident in the course of his employment. Subsequently, he received a letter from the Commissioner of Labour which enclosed a document similar to Exhibit P2 and the document Exhibit P3, which was then unfilled except for the figures 7353/81 inserted against "NWCR" and 25/5/81 inserted against "Accident On". The plaintiff went to the Commissioner's office on July 7, 1981. He claimed that he did not know what the contents of Exhibits P2 and P3 were. The plaintiff was illiterate both in Malay and English.

The plaintiff claimed damage for personal injuries received by him in the course of his employment with the defendants. The preliminary issue raised by the defence was whether the plaintiff was precluded from bringing any action for damages in the High Court. Rajah J. gave judgment in favour of the plaintiff ([1982] 2 M.L.J. 145). The defendants appealed.

Held, dismissing the appeal: (1) on the evidence the learned judge was right in coming to the conclusion that in fact the plaintiff had not applied to the Commissioner for compensation under the provisions of the Act;

(2) in the construction of a consolidating Act (in this case, the Workmen's Compensation Act 1975), there is a particularly strong presumption that it does not alter the existing law;

(3) the scheme of the Workmen's Compensation Act 1975 is not to abrogate a workman's common law cause of action but to enable him, if he wishes, to get a speedy remedy for the injury suffered by him. The said Act does not prohibit the withdrawal of the application for compensation. As soon as the application for compensation is withdrawn the right to maintain an action revives and the workman can then proceed with his action for damages in the court.

Cases referred to:

(1) *R.* v. *Governor of Brixton Prison, ex p. De Demko* [1959] 1 Q.B. 268.
(2) *National Assistance Board* v. *Wilkinson* [1952] 2 Q.B. 648

COURT OF APPEAL.

Karuppan Chettiar and *Myint Soe* for the appellants.

S.B. Shah for the respondent.

Cur. Adv. Vult.